

REMARKS

This patent application presently includes claims 1-52 and 58-66, all of which stand rejected. The description is amended to overcome rejections under 35 U.S.C. §112 , and all rejections are respectfully traversed.

The examiner is thanked for the courtesy of a telephone interview held on November 2, 2005, at which time the present amendment was proposed, and arguments presented below were offered in favor of patentability. At the conclusion of the interview the examiner agreed that the present amendment appears to be supported by the disclosure and would be entered. The examiner was also favorably inclined to allowing the claims in their present condition. However, he wished to review the cited the art more carefully in view of a written response.

Claims 1-52 and 58-66 were rejected to under 35 USC 112, second paragraph, as indefinite. It was the examiner's observation that the independent claims called for the absence of all code before a character is introduced. The examiner noted that the embodiments required the presence of a browser, Flash functionality, and GIF and WAV software, all of which constitute code present before the character is introduced. This rejection is respectfully traversed.

It is eminently clear that executable code must be present in the computer before the introduction of the character. Otherwise, the computer would not run. It would appear that the examiner has not fully consider that the code which must not be used is code dedicated to the production of the character, that is, code that would serve no other purpose. The description has, in fact, now been amended to define "dedicated" along those lines.

There should be no question that there is a clear basis in the disclosure for that language. The portion of the description immediately preceding the insertion clearly discloses that the character is produced with general-purpose software that would be present in the computer before the introduction of the character. Being consistent with this, the claims are clear and concise in stating that the character is introduced without the use of executable code *present before its introduction and dedicated to its production*. This rejection should therefore be withdrawn.

Claims 3-11, 15-20, 25-34, 36, 42, 44, 49, 58, 59, and 63-65 were rejected because "It is not clear how the disclosure describes providing the multilayered animation

features without Flash, because of the language “without the use of any executable code present before its introduction and dedicated to its production.” The rejection is respectfully traversed.

It appears that this rejection is based on the same ground as the previous rejection. Taking into account that the code which must not be used is code “dedicated to its production”, it should be clear that the claims in fact to contemplate the use of Flash, a general purpose plug-in. Accordingly, these claims are clear and concise, and the present rejection should be withdrawn.

Claims of 1-9, 21, 23-28, 34-40, 46, 48-52, 58-66 were rejected as anticipated by Gever et al. International Publication Number WO 97/35280 (Gever ‘280). This rejection is respectfully traversed. Gever ‘280 does not teach or suggest the present invention.

Gever ‘280 relates to programmable computer graphic objects, which are referred to as a “Smart Object.” As explained in Gever ‘280, computer animation systems and methods are well known. Typically, an animation system or method requires the use of a rendering program which creates images based upon received information. Gever ‘280 is no different. As explained beginning at page 6, line 3 of Gever ‘280, the Smart Object data is read by a program that *generates* an animated image, including the Smart Object. Gever ‘280 refers to this program as the “Scene Manager.” The Scene Manager software is either a browser plug-in or a stand alone application (page 24 lines 19-23). In either case, it must be installed by the user (page 6, lines 3-4). In other words, the user's computer must be *pre-programmed* with a dedicated program to produce an animated graphic sequence (page 4, lines 34-35).

Although online advertising makes it possible for so much of the World Wide Web to remain free of charge, users invariably consider it to be a nuisance. It is therefore unlikely that a user would willingly install software to make it possible for animated advertising to be produced on his computer. Any system that requires the user to install such software in order to provide him with animated advertising is untenable.

In contrast to Gever ‘280, the present invention makes use of *only general purpose* software technology *already available* on the user's computer. Animated character generating signals sent to the user are constituted on the basis of what software technology he has available on his computer (page 2, lines 14-15). At page 4, line 24 through page 5, line 10 of the application, it is explained that the preferred animation software is Macromedia Flash, including MP3 sound. However, disclosed as an alternate mechanism for the animation is an animated GIF object with a WAV object for sound. At that time, this technology would have

been present on most computers accessing the World Wide Web. Today, it would be present on virtually all of them. Thus, the present invention does not rely upon the need to use a plug-in or program (executable code) which is *dedicated* to the production of animated characters and would need to be installed. As explained above, if such dedicated executable code were necessary, it would not present a workable solution for animating characters for online advertising.

Turning now to the claims, all of the claims include the feature that the animated character is generated without making use of "executable code present before its introduction and dedicated to its production." For the reasons explained above, this feature makes the claims patentable over Gever '280.

In addition to the preceding, certain claims, for example claims 1, 3 and 5, include the limitation that the method is for modifying an image produced by an application program and that the animated character is introduced into the image. Other claims, for example claimed 12 and 17, include a limitation that the character appears on the content being displayed by the computer. In all of these claims, the method or apparatus modifies and introduces an animated character into an application program image or content being displayed.

The prior art of record does not teach or suggests this. For example, Gever '280 makes use of Scene Manager software to create a Smart Object which is "overlaid over a window in the display" (page 6, line 38+). Clearly, the Smart Object is merely introduced on the display screen and overlies anything in the same location. There is not the slightest suggestion of modifying an image created by an application program or introducing a character into an image or content created by and application program. Thus, the present invention performs a function which is decidedly different from that disclosed by the prior art.

Certain claims, for example claims 3, 5, 15, 25, 27, 34, 59, and 66 provide that the character is located in the uppermost layer of the application program window. This is not taught or suggested by the prior art of record. For example, as explained above, Gever '280 simply generates a initial Smart Object on the screen and it may overlies a portion of a display of an application program, for example on monitor, but it is not introduced *into* an image produced by the application program, nor is it introduced to the uppermost layer of the window *of the application program*. Thus, these claims introduce another feature which further renders them patentable over the prior art.

Certain claims, for example claims 5, 17, 27, 36, 44, 49, and 59 provide that the character overlies an existing image produced on the display screen by the application program and a portion of the character is transparent, so that a portion of the existing image can be seen therethrough. This is not taught or suggested by the prior art of record. For example, as explained above, Gever '280 simply generates a initial Smart Object on the screen which is a separate object of some shape, but there is not e the slightest suggestion that any portion of it be transparent. It may overlie a portion of a display of an application program, for example on a monitor, and it would block that portion, but since no part of the object is transparent, no part of the existing image can be seen *through* the Smart Object. Thus, these claims introduce another feature which further renders them patentable over the prior art.

Together with the previous amendment, the undersigned enclosed a copy of an article from the February 24, 2005 edition of the New York Times, entitled "Floater Ads, The Cousins to Pop-Ups, Evade the Blockers." Advertisements of the type contemplated by the present invention have come to be known as "floater ads." This article attests to the uniqueness, utility and commercial success of those ads. It states that they have been around since 2001, the time when they were first introduced by the owner of the present patent application.

The present patent application was made special owing to the existence of a potential infringer. This article demonstrates that infringement is continuing and increasing and it underscores the need for the grant of a patent at the earliest possible date.

For the above reasons, all of the claims subject to the present rejection distinguish patentable over Gever and should be allowed thereover.

Claims 10-12, 14-20, 29-32, 41-45, and 47 were rejected as obvious over Gever '280 in view of Gever et al. US patent number 6,313,835 (Gever '835). This rejection is respectfully traversed. Neither of these references, nor the combination thereof renders these claims obvious.

Gever' 835 provides no disclosure which would alleviate the shortcomings of Gever '280 as a reference. Accordingly, the combination of the two references would still not render claims 1-9, 21, 23-28, 34-40, 46, 48-52 or 58-66 unpatentable. The present claims, which incorporate the same distinguishing feature, would therefore also be patentable over the combination of references.

It should also be noted that Gever '835 teaches away from the present invention in a significant way, in that it contemplates that the user be able to exercise substantial control over

the animated character. In accordance with all the claims of the present patent application, the user should not be able to exercise control over the character.

For all of the above reasons, Claims 10-12, 14-20, 29 at 232, 41-45, and 47 should be allowed.

Claims 13 and 22 were rejected as obvious over Gever '280 in view of Middleton et al. International Publication No. WO99/13 423, in the case of claim 13, with the addition of Gever '835. Middleton was cited for its disclosure that the effectiveness of web advertising could be tracked in terms of the number of impressions and duration of an advertisement. Its inclusion would not cure any of the defects noted in the preceding rejections. Claims 13 and 22 are therefore believed to be allowable based upon their dependence from an allowable claim.

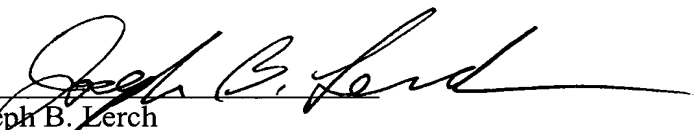
Applicant's attorney has made every effort to place this patent application in condition for allowance. It is therefore earnestly requested that the present amendment be entered, as agreed, that this patent application, as a whole, receive favorable reconsideration and that all of the claims be allowed as presently constituted.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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